

# Amherst

## Massachusetts

Office of the Town Manager  
Town Hall  
4 Boltwood Avenue  
Amherst, MA 01002-2351

Paul Bockelman, Town Manager  
Phone: (413) 259-3002  
Fax: (413) 259-2405  
townmanager@amherstma.gov

To: Select Board

Fr: Paul Bockelman  
Town Manager

Dt: March 20, 2017

Re: Procurement Process for PEG Services

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### Important Update:

Much has transpired since the Board last discussed this matter. I last reported to you in writing on February 27<sup>th</sup>. At that time I noted that, in accordance with rulings by the Department of Revenue and the Inspector General's office, we were preparing a Request for Proposals (RFP) for Public, Educational, and Government (PEG) public access services. Since that memo, we developed a draft RFP and provided online input into what the public desired in an RFP. During the same period, the Select Board received comments on the process at its meetings and through email campaigns. In response, the Board published a statement of the status of the situation on March 8<sup>th</sup>. I drafted articles for the Annual Town Meeting warrant to permit contracting for a period longer than three years and to establish the accounts needed to manage the money as required by the Department of Revenue.

On February 3<sup>rd</sup>, I offered a contract extension to the Board of Amherst Media. The extension was signed and returned to me on March 10<sup>th</sup>. I signed it that same day. This extends the current contract with Amherst Media through June 30, 2017. To be clear, during this entire period, there was no disruption in services. The Town continues to honor all terms and conditions of the contract, including all payments to Amherst Media, and Amherst Media continues to honor all terms and conditions of the contract including recording Town government meetings.

Two important new developments last week impact how we will be managing the contract for PEG services.

In short, both the Inspector General's office and the Department of Revenue have changed the way they are requiring us to interpret funds coming into the Town for PEG access AND how we contract for those services. Apparently, their initial rulings have caused as much confusion and consternation in many other communities as they have here in Amherst.

First, on Wednesday the Department of Revenue informed a meeting of Accountants and Auditors at UMass, and later confirmed in writing to our Comptroller, that "our latest guidance is that we now are allowing an additional year for other accounting methods that were to be no longer sanctioned per the recent IGR 16-102. This was stated at yesterday's DLS Update session at UMass by the Director of Accounts." (Email to Comptroller from Department of Revenue dated March 16, 2017.) This, in essence, means they rescinded IGR 160192. It also means that we will continue to account for PEG funds as we have in the past.

Second, on Friday, Comptroller Sonia Aldrich and I had a conference call with two representatives from the Inspector General's office. We contacted the office immediately after receiving a copy of an email from the Inspector General's office to the Senate President's office dated March 10<sup>th</sup> and subsequently forwarded to the Select Board on March 13<sup>th</sup>.

In December, the Inspector General's office had provided a written opinion that stated in unambiguous terms, "There is no applicable exemption for PEG access TV. Chapter 30B applies." This written determination was a follow-up to an extended conversation between the Inspector General's office and our Comptroller and Assistant to Comptroller earlier in December in which they were seeking guidance on how to contract for PEG services given the new (now postponed) Department of Revenue regulations. With the advice provided by the Inspector General's office, we had been moving forward on developing a Request for Proposals (RFP) as required by Chapter 30B.

In this new email, the Inspector General's office changed the advice it had provided earlier and now states that the Town could treat the PEG funds as a "grant" and, as such, would not have to comply with MGL Chapter 30B (the public bidding law) because grants are not subject to Chapter 30B. The telephone conversation we had with the Inspector General's office on Friday confirmed this new interpretation. (See attached correspondence.)

What does this all mean? In short, we are moving back to the way we have accounted for funds and contracted for services as we have in the past.

**Next Steps:**

- a. We have canceled the release of the Request for Proposals.
- b. We will no longer need an article on the warrant to establish a PEG fund since that is no longer needed.
- c. We will remove the \$300,000 revenue and expenditure items from the Town's budget.
- d. We will remove the \$95,000 revenue and expenditure from JCPC capital plan.
- e. Pending an opinion from Town Counsel to the contrary, we will keep the request for a ten year contract on the warrant.
- f. I will invite the Board of Directors of Amherst Media to commence negotiations with me as soon as they are ready for a new contract.



*Town of*



# *Amherst* Massachusetts

OFFICE OF THE SELECT BOARD

Select Board  
Town Hall  
4 Boltwood Avenue  
Amherst, MA 01002-2351

Phone: (413) 259-3001  
Fax: (413) 259-2405  
selectboard@amherstma.gov  
www.amherstma.gov

*March 8, 2017*

## **Public Access, Education and Government Television**

In recent weeks there have been many questions about the renewal of the Town's contract with Amherst Media including why the Town decided to issue a request for proposals and not immediately engage in negotiations with the current provider. The Select Board recognizes the service that Amherst Media has provided for many years and continues to provide. The law and accounting requirements require that we cannot proceed as the Town did ten years ago.

The last contract with Amherst Media expired on October 15, 2016. While Amherst Media counts the number of days that it is operating without a contract, the Town continues to provide funding and Amherst Media continues to serve our community with public access, education, and government programs on Comcast channels 12, 15 and 17 and by streaming programs through the Internet. This is known as PEG services. Even though the Town and Amherst Media continue to meet our respective obligations according to the terms of the 2007 contract, the Town offered to extend that agreement in writing.

The funds that enable the Town to support PEG services are from our contract with Comcast. A small portion of bills for cable service is provided to the Town to support local PEG services, operating costs and equipment. Every ten years, the Town negotiates a new contract for a cable service provider for Amherst homes and businesses. A significant part of that negotiation was about the amount that will be assessed to customers to support PEG programming and the equipment needs of the Town and the PEG provider.

The contract negotiations extended for more than a year, a process that became more difficult because we had four people in the Town Manager position during that period following the death of John P. Musante. The Town Managers were assisted by a Cable Advisory Committee, which included several members of the Amherst Media Board. The Town also appreciates the assistance provided by Amherst Media to provide information about projected technology needs and associated costs. In August, the Select Board became more involved with the negotiations with Comcast, and we were able to agree to a contract in September for the period from October 16, 2016 through October 15, 2026.

Ten years ago, the Town entered into a similar cable service contract that began on October 16, 2006. The Town and Amherst Community Television (now Amherst Media) entered into negotiations and signed a contract on February 16, 2007. This became more complicated for this renewal because on January 16, 2016 the state Department of Revenue, which regulates how Massachusetts cities and towns account for revenues and expenses, issued new guidelines about accounting for cable television PEG funds. The new accounting procedures must be implemented by June 30, 2017. According to the new guidelines, these funds must be accounted for as Town funds and are to be income and expenses of the Town. This has been confirmed by consultation with the Department of Revenue and the accounting firm that advises the Town's and conducts our annual audit.

Amherst Media's Executive Director suggested to the Select Board that there is an alternative to having the funds from Comcast recorded as Town revenue. He suggested that we could seek to amend

the Comcast contract so that funds for PEG service are paid directly to the PEG provider. The Select Board has not discussed this but would need to consider whether that is compliant with the new Department of Revenue requirement, whether it would be advisable or possible to amend the agreement with Comcast, and whether it is a responsible means for expending more than \$4,000,000 from cable customers in Amherst.

The Select Board, on behalf of the Town, must comply with legal requirements and sound financial management practices. For two reasons, that means that we must publicly issue a notice that the Town seeks proposals to provide PEG services and consider all proposals submitted. First, public procurement law requires that we do so. Second, the current amount available to fund operations is in excess of \$300,000 per year. In addition, Comcast will provide \$1,125,000 during the ten years to meet equipment needs of the Town and its PEG provider. This is a significant amount of money and any agreement for spending such a large amount of public funds must be done openly and carefully.

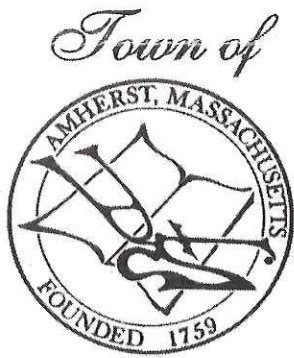
There is an additional issue that Amherst Media brought to the Select Board. Normal procurement agreements made by cities and towns, according to State law, cannot exceed three years. Amherst Media, as a nonprofit corporate entity, needs to be able to plan and have assurance of funding in order to obtain financing for such needs as the lease or purchase of space for its operations. They have purchased land and its Board would like to construct a building. We are considering whether a longer contract term than three years is possible and advisable. But both the Town and Amherst Media, or any PEG provider, must consider that much can change between now and 2026 that will affect Comcast, the Town, and the PEG provider. The means for production and distribution of entertainment are changing rapidly. Because of what is happening in Washington, laws and government finances may change in significant ways that we cannot predict. Board and staff changes could materially affect a provider's goals and operations.

To help us develop a new agreement for PEG services, we need to know what programming on the Education and Government channels is most important. We urge everyone to respond to a survey on the News and Announcements section of the Town web site, [www.amherstma.gov](http://www.amherstma.gov). The survey does not ask about program expectations for public access channel 12 because it would be inappropriate for the Town to influence those decisions, including through a contract.

The Town Manager and Select Board are fulfilling our responsibility to serve this community. We respect Amherst Media's desire to continue to serve our community and enjoy financial stability. But we must proceed according to law, sound management practice, and in the best long-term interests of this community.

Amherst Select Board





# *Amherst* Massachusetts

Office of the Town Manager  
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Paul Bockelman, Town Manager  
Phone: (413) 259-3002  
Fax: (413) 259-2405  
townmanager@amherstma.gov

To: Select Board

Fr: Paul Bockelman  
Town Manager

Dt: February 27, 2017

Re: RFP Process for PEG Services

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## **Current Status:**

As I reported to you earlier, an agreement between the Town of Amherst and Amherst Community Television, Inc. was signed on February 16, 2007. The contract was retroactive to October 11, 2006 and expired on the same date as the "expiration of the cable license by and between the Town and Comcast", which was October 15, 2016.

The Town continues to honor all terms and conditions of the contract, including all payments to Amherst Media, and Amherst Media continues to honor all terms and conditions of the contract including recording Town government meetings. I am grateful for Amherst Media's cooperation during this period.

There is no change to any terms of this business relationship.

## **Status Report:**

First, some background. In January 2016 the Massachusetts Department of Revenue Division of Local Services issued IGR 16-102 which requires the Town to account for PEG fees in a different way than we had in the past. We reviewed this guideline with our auditing firm, Melanson Heath, and with our Department of Revenue Representative. We asked if we could simply continue as we had in the past since we viewed the funds as a pass-through and were not on our balance sheet at year-end. Both parties rejected this approach and said we would need to comply effective July 1, 2017 for fiscal year 2018.

In my FY18 budget presentation, I presented the revenue for PEG from Comcast as a local receipt. And I have budgeted an equivalent expenditure on the expense side of the budget. The goal is to replicate our existing business relationship with Amherst Media. In short, we are working to find a way to ensure that the designated funds received by the Town from Comcast can be transmitted to the organization awarded the bid.

Unfortunately, complying with the law means we need to follow Procurement Laws and publicly bid for the services that Amherst Media has been providing for the Town. This is a significant change in our past practice. We contacted the Inspector General's office to see if this category was exempt in any way. They said it was not; we are required to follow the State's procurement laws. We then asked if Amherst Media could be considered an intergovernmental agency of the Town, but the answer was that they are not and could not be treated that way.

**Next steps:**

We are preparing a Request for Proposals which will move this process forward so that a contract will be finalized as soon as practicable and our accounting will be in compliance by July 1, 2017.

I will assemble a committee to review the proposal that will include our Procurement Officer, I.T. Director, a member of the Select Board, and the Select Board's Amherst Community Television Board Liaison.

We have set a proposed timeline - the final timeline will be distributed upon the release of the RFP - as follows:

On the web site	Friday, March 3 <sup>rd</sup>
Select Board review of RFP	Monday, March 13, 2017
Advertise RFP and make it available for distribution:	Friday, March 17, 2017
Proposals Due:	Thursday, April 6, 2017 @ 11:00 AM
Proposals Reviewed:	Beginning week of April 10 <sup>th</sup>
Final Decision:	By Thursday, April 28, 2017
Contract signed & negotiated:	By Monday, May 15, 2017.

## **Bockelman, Paul**

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**From:** Bowser, Holly  
**Sent:** Thursday, December 8, 2016 2:33 PM  
**To:** Aldrich, Sonia; Bockelman, Paul  
**Subject:** FW:

See below...

Holly Bowser  
Asst. Comptroller

Town of Amherst  
4 Boltwood Avenue  
Amherst, MA 01002

ph: (413) 259-3026  
or ext 3142  
fax: (413) 259-2401

-----Original Message-----

From: Bizanos-Ashe, Anastasia (IGO) [mailto:[anastasia.bizanosashe@MassMail.State.MA.US](mailto:anastasia.bizanosashe@MassMail.State.MA.US)]  
Sent: Thursday, December 08, 2016 1:28 PM  
To: Bowser, Holly <[bowserh@amherstma.gov](mailto:bowserh@amherstma.gov)>  
Subject:

Holly,

We only give verbal guidance and don't provide letters. But I'm happy to talk to the town manager if he/she would like confirmation. It won't take long.

Or you can share this brief info with him or her:

There is no applicable exemption for PEG access TV. Chapter 30B applies.

Best,

Natasha Bizanos





## **Bockelman, Paul**

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**From:** Bockelman, Paul  
**Sent:** Monday, March 13, 2017 4:27 PM  
**To:** Bowser, Holly; Aldrich, Sonia  
**Subject:** FW: Office of the Inspector General Opinion on PEG & 30B

Thoughts on this?

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**From:** Jim Lescault [mailto:director@amherstmedia.org]  
**Sent:** Monday, March 13, 2017 4:06 PM  
**To:** Select Board <Selectboard@amherstma.gov>  
**Subject:** Office of the Inspector General Opinion on PEG & 30B

Dear Select Board Members,

Please read this just in from the Senate President's General Counsel, David Sullivan, regarding 30B determination by IG's Office. Jim

Begin forwarded message:

**From:** "Sullivan, David (SEN)" <David.Sullivan@masenate.gov>  
**Subject:** FW: Cable Access Media Centers  
**Date:** March 13, 2017 at 3:44:28 PM EDT  
**To:** "director@amherstmedia.org" <director@amherstmedia.org>

Dear Mr. Lescault,

Please the response below from the IG's office. I think it is good news. If you have questions, you are welcome to email Josh Giles directly. I hope this is helpful.

David

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**From:** Giles, Joshua L. (IGO) [joshua.giles@MassMail.State.MA.US]  
**Sent:** Friday, March 10, 2017 2:27 PM  
**To:** Sullivan, David (SEN)  
**Subject:** RE: Cable Access Media Centers

Hello David,

In regard to exemptions to 30B, the Office generally is not in favor of them, and that is the case here.

However, as we understand it, many of these PEG services are provided under grant agreements with non-profits. Under M.G.L. c. 30B § 2, the definition of "grant agreement" is:

"Grant agreement", an agreement between a governmental body and an individual or nonprofit entity the purpose of which is to carry out a public purpose of support or stimulation instead of procuring supplies or services for the benefit or use of the governmental body.

Further, the definition of services is:

"Services", the furnishing of labor, time, or effort by a contractor, not involving the furnishing of a specific end product other than reports. This term shall not include employment agreements, collective bargaining agreements, or grant agreements.

Section 1 of 30B states that the chapter applies to "every contract for the procurement of supplies, services or real property..."

Since many of these PEG services are provided by nonprofits through grant agreements with the town and are therefore not considered "services" under c. 30B, there isn't a need for an exemption since, under these circumstances, PEG services provided by a nonprofit are not subject to c. 30B in the first place.

One key distinction here is that this applies to nonprofits, not for-profit entities. The other key is that the nonprofit is carrying out a public purpose of support or stimulation, which PEG services are.

I hope this helps. Please let me know if I can be of any further assistance.

Thanks,  
Josh

Joshua L. Giles  
Director  
Policy and Government Division  
Office of the Inspector General  
One Ashburton Place, Room 1311  
Boston, MA 02108  
[Joshua.Giles@state.ma.us](mailto:Joshua.Giles@state.ma.us)

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**From:** Jim Lescault [<mailto:director@amherstmedia.org>]  
**Sent:** Wednesday, February 22, 2017 10:32 AM  
**To:** Sullivan, David (SEN)  
**Subject:** Re: Cable Access Media Centers

Dear Mr. Sullivan,

I have attached a response after reviewing DOR's Atty Colleary's email as you requested. I hope this will result in further conversations regarding how the state can move forward. Thank you for your time and consideration in this matter.

Respectfully,

Jim Lescault  
[director@amherstmedia.org](mailto:director@amherstmedia.org)

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On Feb 14, 2017, at 10:37 AM, Sullivan, David (SEN) <[David.Sullivan@masenate.gov](mailto:David.Sullivan@masenate.gov)> wrote:

Dear Mr. Lescault,

Senate President Rosenberg asked me to look into the concern you raised in your message. I forwarded it to the legal counsel for DOR's Division of Local Services, who sent me the response below. Would you please review it, and let me know how the state legislation that your letter suggested would address the issue? Thank you, and I look forward to hearing back from you.

David E. Sullivan  
Special Counsel  
Office of Senate President Stan Rosenberg  
State House, Room 332  
Boston, MA 02133  
617-722-1500 x1513  
[David.Sullivan@masenate.gov](mailto:David.Sullivan@masenate.gov)

<image001.gif> <image002.gif> [StanRosenberg.com](http://StanRosenberg.com)

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**From:** Colleary, Kathleen [<mailto:colleary@dor.state.ma.us>]  
**Sent:** Friday, February 10, 2017 3:09 PM  
**To:** Sullivan, David (SEN)  
**Subject:** RE: Cable Access Media Centers

David,

I reviewed this a few times and am not sure I completely understand the point being raised.

I don't see how our guidelines impact one way or another the process used by a city or town to determine the vendor – typically a non-profit – to provide the PEG service if it doesn't run its own operation. Our guidelines only address the options municipalities have under state law to account for and spend the monies they get under their franchise agreements for PEG access facilities and operations. As indicated in the constituent's letter, the purpose of these options is to let the municipalities separately account for and dedicate the revenues for spending on PEG services, regardless of the manner in which they provide for them as part of their franchise agreements.

The concern may be that many of the vendors are established to provide PEG service for a particular city or town so the selection/designation should be part of the franchise process, rather than subject to a 30B procurement for services. Since DLS does not regulate procurement, we can't speak to that issue.

Hope this helps.



Kathleen

Kathleen Colleary, Chief  
Bureau of Municipal Finance Law  
Division of Local Services  
Department of Revenue  
617-626-2400  
[colleary@dor.state.ma.us](mailto:colleary@dor.state.ma.us)

<image003.png>

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From: Jim Lescault <[director@amherstmedia.org](mailto:director@amherstmedia.org)>  
Sent: Thursday, January 19, 2017 2:56 PM  
Subject: RE: Cable Access Media Centers  
To: Rosenberg, Stan C (SEN) <[stan.rosenberg@masenate.gov](mailto:stan.rosenberg@masenate.gov)>  
Cc: DiTullio, James (SEN) <[james.ditullio@masenate.gov](mailto:james.ditullio@masenate.gov)>

Dear Mr President,

I have attached a letter that describes the dire situation many access media centers in Mass are facing, including Amherst Media. There is a prescribed remedy but it will need legislative guidance and action.

I appreciate any assistance you and your staff can provide at this time.

Respectfully,

Jim Lescault  
[director@amherstmedia.org](mailto:director@amherstmedia.org)

Get Apple Certified @ Amherst Media - [amherstmedia.org/apple](http://amherstmedia.org/apple)



Jim Lescault  
[director@amherstmedia.org](mailto:director@amherstmedia.org)

Get Apple Certified @ Amherst Media - [amherstmedia.org/apple](http://amherstmedia.org/apple)



# DLS

DIVISION OF LOCAL SERVICES  
MA DEPARTMENT OF REVENUE

Mark E. Nunnelly  
Commissioner of Revenue

Sean R. Cronin  
Senior Deputy Commissioner

## Informational Guideline Release

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Bureau of Accounts  
Informational Guideline Release (IGR) No. 16-102  
January 2016

### **CABLE TELEVISION PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS SPECIAL REVENUE FUNDS**

**(G.L. c. 44, § 53F½; G.L. c. 44, § 53F¾)**

This Informational Guideline Release (IGR) explains to local officials the procedures and requirements for establishing an enterprise fund to account for monies received and spent for cable television public, educational and governmental (PEG) access facilities and operations, or alternatively, for creating a receipts reserved fund known as the PEG Access and Cable Related Fund to fund PEG access programming, as well as certain other municipal cable-related expenses.

#### Topical Index Key:

Accounting Policies and Procedures  
Special Funds

#### Distribution:

Treasurers  
Clerks  
Accountants/Auditors  
Mayors/Selectmen  
Managers/Administrators/Exec. Secys.  
Finance Directors  
City Solicitors/Town Counsels

**CABLE TELEVISION PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS  
SPECIAL REVENUE FUNDS**

**(G.L. c. 44, § 53F½; G.L. c. 44, § 53F¾)**

**SUMMARY:**

These guidelines explain two options now available to cities and towns to separately account for cable franchise fees collected from customers by cable companies and other cable-related monies negotiated in cable television agreements between the municipality and the cable television operator.

Those monies include fees collected from customers by the cable operator in connection with the franchise and in support of public, educational and government (PEG) programming. In addition to the imposition of these franchise fees, cable licensing agreements typically require that cable companies provide services, facilities and equipment for PEG channels, deliver cable television programming to municipal buildings, and maintain customer service quality. Under state law, cable operators also pay the municipality an annual license fee, which is based on the number of cable customers. All of these monies are general fund revenues, absent a special act treating them otherwise. G.L. c. 44, § 53.

Cities and towns may now designate cable PEG access operations or services as an enterprise and separately account for all franchise fees and other revenues derived from enterprise activities in the same manner as other enterprise funds. G.L. c. 44, § 53F½.

Alternatively, cities and towns may reserve the franchise fees and other cable related revenues for appropriation to support PEG access services, monitor compliance with the franchise agreement or prepare for license renewal by accepting G.L. c. 44, § 53F¾ and establishing a PEG Access and Cable Related Fund.

This statute may be accepted to take effect for fiscal years beginning on or after July 1, 2015.

**GUIDELINES:**

**I. TRANSITION TO SPECIAL REVENUE FUND**

As part of the certification of general fund free cash, the Director of Accounts will close any reservations of cable franchise fees or other cable-related funds that appear on a city or town balance sheet on or after June 30, 2016 unless:

**BUREAU OF ACCOUNTS**

**MARY JANE HANDY, DIRECTOR**



- A. The city or town has accepted one of the special revenue funds, as explained in Sections II and III below, and
- B. The legislative body of the city or town has voted to have the accounting officer transfer any balance to the accepted fund at the beginning of the fiscal year the fund will start operation. The transfer may be voted as part of the acceptance or separately.

## **II. CABLE PUBLIC ACCESS ENTERPRISE FUND**

Cities and towns may accept G.L. c. 44, § 53F½ and establish an enterprise fund to separately account for all revenues and expenditures in connection with operating cable PEG access service for city or town residents, whether the service is operated by a city or town department or a contractor.

For detailed guidance on adoption of an enterprise fund, setting the annual enterprise budget, accounting for enterprise activities and operation of the fund, see the Enterprise Funds Guidelines issued by the Bureau of Accounts.

## **III. PEG ACCESS AND CABLE RELATED FUND**

### **A. Local Acceptance**

#### **1. Acceptance Procedure**

Acceptance of G.L. c. 44, § 53F¾ for a PEG Access and Cable Related Fund (Fund), is by majority vote of the municipality's legislative body, subject to charter. G.L. c. 4, § 4. (See attached sample acceptance vote.)

#### **2. Revocation of Acceptance**

Acceptance may be revoked, but the city or town must wait until at least three years after acceptance. Revocation is also by majority vote of the municipality's legislative body, subject to charter. G.L. c. 4, § 4B.

#### **3. Notification of Acceptance or Revocation**

The city or town clerk must notify the Municipal Databank if it accepts or revokes G.L. c. 44, § 53F¾. (See "Notification of Acceptance or Revocation.") The notification should be made **as soon as possible** after the vote.

4. **Effective Date**

The Fund will begin operation for the fiscal year that begins the next July 1, unless a later fiscal year is designated in the acceptance. Revocation of the statute terminates the Fund at the end of the fiscal year in which the revocation is voted.

B. **Special Revenue Fund**

The Fund is a receipts reserved for appropriation special revenue fund.

1. **Receipts**

The following revenues received in connection with the municipality's franchise agreements may be credited to the Fund:

- a. Cable franchise fees collected by the cable operator for PEG access and received by the city or town.
- b. Annual license fees paid by the cable operator. G.L. c. 166A, § 9.
- c. Other revenues received in connection with the franchise agreement.

2. **Investment**

The treasurer is the custodian of the Fund. The treasurer may invest the monies of the Fund in the same manner as general funds under G.L. c. 44, §§ 55, 55A and 55B. The treasurer may pool the cash and does not have to establish a separate bank account for the Fund.

Interest earned on Fund monies belongs to the general fund.

C. **Expenditures**

An appropriation is required to spend any monies in the Fund. Appropriations are by majority vote of the legislative body and are limited to the actual unencumbered balance of the Fund at the time of the appropriation. Anticipated receipts cannot be appropriated.

Monies from the Fund may be appropriated consistent with the cable franchise agreement to:

1. Support cable PEG access service or programming for city or town residents, whether operated by a city or town department or a contractor.
2. Monitor the cable operator's compliance with the franchise agreement.
3. Prepare for renewal of the cable franchise license, including any associated expert and legal services.

Payment of bills charged to appropriations from the Fund must follow the same process used for payment of other municipal expenses. G.L. c. 41, §§ 52 and 56. A payment voucher with appropriate supporting documentation is submitted to the accounting officer for placement of the bill on the treasury warrant.

**D. Accounting**

The accounting officer must establish and maintain the Fund as a separate account and record all activity in the Fund.

1. Receipts are recorded directly into the Fund.
3. Expenditures are recorded as direct expenditures in the Fund.
4. The unspent and unencumbered balance of an appropriation for a particular cable-related purpose is closed to the Fund.
5. The balance in the Fund at the end of a fiscal year carries forward to the next fiscal year.

**E. Supplemental Appropriations**

Appropriations may be made from other municipal funding sources, such as the tax levy, free cash or other available funds, to supplement and carry out cable-related purposes funded by the Fund. However, monies from these sources may not be appropriated directly into the Fund. Depending on the purpose, appropriations from the Fund could be operating or special purpose appropriations and the accounting officer would close them out in the same manner as other such appropriations.

**F. Fund Revocation**

If the city or town revokes its acceptance of G.L. c. 44, § 53F¾, the accounting officer is to close the fund balance to the general fund at the end of the fiscal year.



**SAMPLE**

**(Sample should not be used without the advice of municipal counsel.)**

**PEG ACCESS AND CABLE RELATED FUND ACCEPTANCE**

**Legislative Body Vote**

**ARTICLE/ORDER.** To see if the city/town will accept General Laws Chapter 44, Section 53F<sup>3</sup>/<sub>4</sub>, which establishes a special revenue fund known as the PEG Access and Cable Related Fund, to reserve cable franchise fees and other cable-related revenues for appropriation to support PEG access services and oversight and renewal of the cable franchise agreement, the fund to begin operation for fiscal year \_\_\_\_\_, which begins on July 1, \_\_\_\_\_ or take any other action relative thereto.

**MOTION.** Moved/ordered that the city/town accept General Laws Chapter 44, Section 53F<sup>3</sup>/<sub>4</sub>, which establishes a special revenue fund known as the PEG Access and Cable Related Fund, to reserve cable franchise fees and other cable-related revenues for appropriation to support PEG access services and oversight and renewal of the cable franchise agreement, the fund to begin operation for fiscal year \_\_\_\_\_, which begins on July 1, \_\_\_\_\_.



## Bulletin

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2016-02B

### **FY2017 BUDGET ISSUES AND OTHER RELATED MATTERS**

TO: City/Town/Regional School District Officials  
FROM: Mary Jane Handy, Director of Accounts  
DATE: April 2016  
SUBJECT: FY2017 Budget Issues and Other Related Matters

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This *Bulletin* addresses several issues that cities, towns, regional school and other districts should consider for FY2017 revenue and expenditure budgeting and other related matters.

*New information from last year's Bulletin:*

#### **PEG access**

Since the passage of Chapter 352 of 2014 regarding Cable Television PEG Access funds and the issuance of IGR 16-102 on the matter, the Bureau has received numerous calls and e-mails from communities as to their current accounting treatment of these funds.

In order to facilitate local decisions about the most appropriate accounting treatment for these revenues, the Bureau will extend for one year the date announced in IGR 16-102 for completing any transition from a community's current accounting treatment. Communities will now have until the close of fiscal year 2017 on June 30, 2017 to consider the available accounting options and take the necessary actions to implement it. Accounts treated otherwise at the end of fiscal year 2017 will be closed to the General Fund as part of the June 30, 2017 free cash certification. Any inconsistent statement in Section 1 of IGR 16-101 or other prior written publications or statements is superseded.

## **911 Reimbursements**

The Bureau has been informed by the State 911 Department that reimbursements for all fiscal years prior to FY2014 have been completed. Any community with a deficit in this account for any fiscal year prior to FY2014 must provide for that deficit in the FY2017 tax rate.

Be aware that the contracted amount must be less than the apportioned amount and is the limit of the reimbursement. Also be aware that even the contracted amount may not be reimbursed if non-eligible costs are included. If already paid, these non-eligible costs will have to be provided for.

## **Municipal Modernization**

Legislative hearings are continuing for *The Act to Modernize Municipal Finance and Government* filed by the Governor in December of 2015. Although none of the bill's provisions has yet to pass, the Division of Local Services (DLS) expects to notify and to explain all new provisions to local officials later this year.

## **Accountant's Manual**

The new Accountant's Manual for the Massachusetts Municipal Auditors' and Accountants' Association is under final review and will be issued in the near future. Watch for additional details in this matter.

## **Gateway**

The Tax Rate module of Gateway, the application that allows authorized local officials to enter, analyze, sign and submit local government data to the Division, has been improved and is currently being tested for FY2017 submissions. Improvements for overall efficiency have been suggested by many users and will be incorporated into this update.

## **BOA Field Rep Assignments**

The Bureau of Accounts has recently promoted two field representatives to supervisors, hired three new field representatives and hired one additional staff member. You should expect our field representatives to contact your community or regional school district in the near future. Here is the new [listing](#) of field representatives and their assignments.



*Modified information from last year's Bulletin:*

## **Snow and Ice**

Chapter 10, § 58 of the Acts of 2015 authorized cities and towns by local decision to amortize their FY2015 snow and ice removal account deficit over three fiscal years. Please remember to include the amortized amount on the FY2017 Tax Rate Recap either as an appropriation or as an amount to be raised.

Massachusetts Emergency Management Agency (MEMA) has been working closely with the Federal Emergency Management Agency (FEMA) for potential reimbursement for qualifying expenditures incurred during certain January 2015 snowstorms. The Bureau has allowed special accounting treatment for the intended reimbursement.

## **Community Preservation Fund**

During FY2016, 158 cities and towns collected the local Community Preservation Act (CPA) surcharge and are eligible for state matching grants in FY2017. DLS estimates that the balance in the state trust fund will be sufficient to provide a first round match of 19% of the surcharge levied by each city and town.

In FY2016, there will be equity and surplus distributions for those cities and towns that have adopted the maximum 3% surcharge. With these additional distributions, the total state reimbursement for qualifying cities and towns will increase, depending on their decile and total surcharge amount. The above estimates are subject to change depending on Registry of Deeds collections between now and October.

## **Estimating FY2017 Medicaid Receipts**

The Bureau continues to urge caution when estimating these receipts as the amount due the community may not be consistent from year to year.

## **Estimating FY2017 Enterprise Revenues**

The Bureau will not allow FY2017 estimated revenue for user charges based upon the government's intent alone to raise these charges in the future. These charges must be increased before the Tax Rate Recap is submitted for tax rate certification to the Bureau. When revenues are estimated based upon consumption alone, the Bureau will continue to require reasonable supporting documentation for this claim. Be reminded that a structural deficit in enterprise fund retained earnings, not due to timing, must be provided for in the next tax rate.

## **Appropriating Enterprise Retained Earnings**

Appropriation from retained earnings may only be made after the earnings are certified by the Bureau and in no greater amount than so certified.

## **Expenditure Budgeting for FY2017**

- **Pension Appropriations:** A pension assessment must be provided for in the FY2017 tax rate. If the amount appropriated is less than the assessment, the amount needed to fully fund the assessment must be raised on the Tax Rate Recap, (page 2, part IIB, line 10) per G.L. c. 32, § 22.
- **Self-Insurance Plans for Employee Health Insurance:** If the June 30, 2016 claims trust fund balance is in deficit, the deficit must be provided for (1) in a city or town by appropriation or by raising it on the Tax Rate Recap as an Other Amount to be Raised or (2) in a regional school district by providing for it in the FY2017 regional school district budget. The Bureau will notify DESE of any deficit in the regional school district. Any deficit is also a reduction to a city or town's certified free cash or to a regional school district's certified excess and deficiency amount.

Communities with a self-insurance fund must record on the balance sheet for the fund both the warrants payable and IBNR amounts as of 6/30/16. Any undesignated fund balance deficit which may result, after being offset by the working deposit, must be raised on the current year's tax rate recap. Should the balance sheet for free cash certification not be submitted to the Division of Local Services prior to the setting of the tax rate, this deficit must be disclosed on the Accountant's Letter in Lieu of Balance Sheet.

## **Certification of Notes and Receipt of Audit Reports**

For FY2017, the Bureau will not certify revenue notes of a city, town, district or regional school district if a required audit for the period ended June 30, 2015 has not been submitted to the Bureau.

*Additional matters of concern:*

## **Host Agreement Funds Received from Medical Marijuana Dispensaries**

Funds received by communities per agreements with medical marijuana dispensaries belong to the community's General Fund under G.L. c. 44, § 53. These funds cannot be separately appropriated as available funds.

## **Internal Borrowing**

The Bureau reminds Treasurers and other local officials that provisions of internal borrowing (G.L. c. 44, § 20A) require that advances must be repaid during the same fiscal year. Communities using internal borrowing especially for capital projects must be aware that funds not externally borrowed by June 30th may result in a significant reduction to free cash.



## **Expenditure of Federal Funds Threshold**

The FY2017 threshold under the Federal Single Audit Act of 1984 as amended requires that there be a financial audit or, a specific program audit, if granted by the appropriate federal oversight or cognizant agency, if \$750,000 or more in federal funds are expended during any one fiscal year.

## **Energy PILOTs**

Communities receiving "payment in lieu of taxes" (PILOTs) under the provisions of G.L. c. 59, § 38H(b) must follow the requirements discussed in IGR 98-403 for tax agreements regarding power plants of generation and wholesale generation companies, which include solar generation facilities that provide electricity to the grid. Note Part I. C. which indicates that:

Agreements should fix values or formulas for determining values (rather than fixing tax payments). These values should be representative of the future full and fair cash values of the plant for the term of the agreement and payments resulting from them will be treated as property taxes for Proposition 2½ and tax classification purposes. The payments are subject to the municipality's levy limit, and the values will be used to calculate its levy ceiling and minimum residential factor.

Communities are not allowed to place a negotiated dollar amount as part of PILOT estimated receipts on page 3 of the Tax Rate Recap form. The negotiated payments must be translated into assessed value and applied as indicated in IGR 98-403.

For more detailed information on the matter, please contact your field rep at the Bureau of Local Assessment.

## **Energy Generating Facilities Enterprise Fund**

Cities and towns that own and operate energy generating facilities subject to accounting, finance and reporting provisions of G. L. Chapter 44 rather than Chapter 164 may establish an enterprise fund under G.L. c. 44, § 53F½ using the same method as for any other utility. Any funds received as energy credits by the city or town which would otherwise close to the General Fund under G.L. c. 44, § 53 would now close to the enterprise fund.

## **Balance Sheets as of 6/30/2016 and Revenue Recognition**

The Bureau historically has allowed revenue recognition of State aid payments as well as other reimbursements on the balance sheet as of June 30. For free cash certification purposes, receipts from July 1 thru September 30 can be applied to offset expenditures that resulted in a deficit fund balance as of June 30. The Bureau will only allow revenue recognition for expected reimbursements not received by September 30 from MassDOT for Chapter 90 expenditures provided:



- the community can document that the request for reimbursement has been filed with MassDOT by September 30, 2016; and
- the Bureau must be satisfied that payment will be made.

### **Free Cash Update and Non-Recurrent Distributions to Cities and Towns**

Cities and towns may request from the Director of Accounts an update of free cash to reserve and appropriate non-recurrent distributions over a certain period of time.

G. L. c. 59, § 23 permits inclusion of receipts attributable to prior years, principally collection of property taxes, up to March 31. This update to the amount previously certified provides additional spending authority based on those items, but must first be certified by the Director prior to appropriation. The Director will not certify an additional amount if use of those funds could, in the Director's opinion, result in a negative free cash as of the following June 30. Only one request may be made per fiscal year. If an amount is certified by the Director and a negative free cash results the following June 30, no similar update may be requested for the following fiscal year.

### **G.L. Chapter 44, § 31 Emergencies**

Emergency payments under G.L. c. 44, § 31 made in FY2016 after the setting of the tax rate through June 30, 2016 must be reported to the Assessors for inclusion in the FY2017 tax rate unless otherwise provided for. Emergency payments made in FY2017 prior to the setting of the tax rate may be included in the FY2017 tax rate, but must be included in the FY2018 tax rate unless otherwise provided for.

### **School Finance**

#### *State Special Education Reimbursement Fund ("Circuit Breaker")*

Per DESE regulations, the balance in this fund at the close of FY2016 can be no greater than DESE's FY2016 reimbursement, not including extraordinary assistance. Any excess fund balance must close to the General Fund. Any deficit fund balance must be charged to FY2017's school budget. See 603 CMR 10.07 for additional details

### **Federal School Grant Deficits**

The Bureau has noted that a number of balance sheet reports reflect deficits in certain federal school grants. The Bureau may reduce free cash or excess and deficiency for any federal school grants which have been reported in deficit on the balance sheet.

## **Regional Schools Only**

### *Annual Audit*

Per G.L. c. 71, § 16A, the Regional School Committee has the duty to ensure that the district has an annual financial audit and forwards a copy of the audit to the Director of Accounts.

### *Balance Sheet*

Regional school districts must submit a balance sheet as of June 30 to the Bureau for certification of excess and deficiency on or before October 31 of each year. DESE regulations indicate that if a balance sheet is not filed timely, the Commissioner of DESE may request the Commissioner of Revenue to withhold all or some part of the District's State Aid distribution until the balance sheet is submitted. The Bureau provides annual instructions on the submission requirements. Audited balance sheets are not required, but the submission must be in a format that will allow the Bureau to calculate an excess and deficiency amount.

### *Appropriation of Excess and Deficiency*

The Bureau and the DESE agree that excess and deficiency must be certified by the Bureau of Accounts from a regional school district's balance sheet and can only then be used as a funding source in the FY2017 budget.





Opinion > Editorials (/Opinion/Editorials/)

# Editorial: Amherst officials prudent to seek local broadcast bids

Sunday, March 19, 2017

Town officials are correct in soliciting bids for the community broadcasting services that Amherst Media has provided for 41 years. It's not a criticism of the job done by the nonprofit, but rather a sound business practice, to offer any competitors a chance to make their pitch.

Town Manager Paul Bockelman says he is following new state procurement regulations which no longer allow about \$300,000 a year in operating expenses to be transferred directly from Comcast, which provides cable television service, to Amherst Media, which produces the local public, education and governmental programs. Instead, that money will now be earmarked in the Amherst town budget for local broadcast services.

The new 10-year contract signed by the town with Comcast in October includes \$1.125 million in capital expenses, such as improved equipment.

During the past two months, Amherst Media officials, including executive director James Lescault, have argued that since it has been doing business with the town for more than four decades, it should not have to compete with other potential bidders, and that the regulation cited by Bockelman is a recommendation rather than a requirement. Last week, Lescault gave town officials correspondence from the inspector general's office suggesting that Amherst Media is exempt from the procurement regulation.

However, an auditing firm hired by the town and the state Department of Revenue have given the town written opinions supporting Bockelman's interpretation. Regardless, it is prudent for the town to periodically review the quality of local broadcast services, especially with more than \$4 million for operating and capital expenses at stake.

Bockelman has promised a "highly transparent process" once the town issues a request for proposals. Part of that process is to review any competing proposals, and measure them against the performance of Amherst Media.

Since there has been no dissatisfaction expressed with the current services, we expect that Amherst Media's track record will be a significant factor in awarding a new contract, which Bockelman hopes to have signed by July 1.

Meanwhile, Amherst Media continues to receive payments from Comcast for its operating expenses, because the town extended the old contract, which expired last October, through June 30.

## RELATED STORIES

Inspector general official: Town does not have to bid contract for public access services (/Amherst-Media-makes-case-for-not-putting-public-access-contract-out-to-bid-8700163)

Select Board members say that going forward they prefer a new contract that initially covers three years, with a pair of three-year renewals. That periodic review of local services makes sense because of rapid changes in the broadcasting industry.

According to Bockelman, that would provide a "couple of check-in points along the way," though the contract would be written so as not to compromise the stability of community programs. "Our goal is to have a long-term relationship with somebody, and I understand that sensitivity," he said.

In making the case to renew their contract, Lescault and his colleagues should refrain from rhetoric such as his claim that "Amherst Media's independence is being threatened by the town." That obscures what should be a conversation about the accomplishments of Amherst Media and where it sees opportunities to expand its local programs.

We also hope that Lescault provides more details about Amherst Media's on-again plan to build a new headquarters in downtown Amherst on land it purchased in 2013 near the intersection of Main and Gray streets. Amherst Media at that time announced a \$1 million capital campaign to help pay for a 9,000-square-foot building that would cost some \$2.5 million. But that campaign never got off the ground, and Amherst Media last year tried to sell the .56 acres for \$490,000.

In November, Amherst Media took the property off the market and said it was renewing efforts to build a new studio there with the help of a matching grant offered by the Rotary Club of Amherst. Lescault said the original plan would be scaled back, and that support from local businesses would be sought to help pay for more modest quarters.

That would end the uncertainty faced by Amherst Media since 2010 when it was issued a notice by Eversource to vacate the space it rents on College Street. Amherst Media, which has operated a studio there since 1991, has since negotiated temporary arrangements to stay.

If Amherst Media again is selected as the local broadcaster, we hope that provides impetus for the community support needed to help it pay for a modern studio in its own building at the more central downtown site. That would be a win-win situation for the town and Amherst Media.